



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R03-OAR-2015-0479; FRL-9935-58-Region 3]**

### **Approval and Promulgation of Air Quality Implementation Plans; Delaware; Low Emission Vehicle Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Delaware State Implementation Plan (SIP). The SIP revision pertains to adoption by Delaware of a Low Emission Vehicle (LEV) Program. The Clean Air Act (CAA) grants authority to EPA to adopt Federal standards for emissions from new motor vehicles, and generally preempts states from doing so. However, the CAA grants California authority to adopt its own motor vehicle standards, as long as EPA approves California's program via a preemption waiver. The CAA also allows other states to then adopt California's vehicle standards for which EPA has granted such a waiver, provided the state's standards are identical to California's standards and the state adopts the standards at least two years prior to their commencement. Delaware adopted California emission standards for passenger cars and trucks, and medium-duty passenger and other medium-duty vehicles in 2010, effective beginning with new vehicles sold in model year 2014. Delaware amended its LEV program regulation in 2013 to incorporate California's most recent LEV regulatory updates to its program. It is this program that Delaware submitted to EPA in August 2014 for inclusion into Delaware's SIP and which is the subject of

this rulemaking action. The purpose of this SIP revision is to reduce vehicle emissions that contribute to formation of ground level ozone, fine particulate matter, and greenhouse gas (GHG) emissions. EPA is approving Delaware's LEV SIP revision as part of the Delaware SIP in accordance with the requirements of the CAA.

**DATES:** This rule is effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0479 by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- B. E-mail: fernandez.cristina@epa.gov.
- C. Mail: EPA-R03-OAR-2014-0479, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2015-0479. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information

provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814-2176, or by e-mail at rehn.brian@epa.gov.

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### **I. Background**

#### **A. What Action is EPA Taking?**

EPA is taking direct final rulemaking action to approve a SIP revision submitted by Delaware to EPA on August 28, 2014, requesting the inclusion of the state's adopted and implemented California LEV standards as part of the Delaware SIP. A description of the direct final

rulemaking process being used by EPA to approve Delaware's SIP revision is described in section III of this rulemaking action. Delaware's LEV standards are applicable to subject, new motor vehicles sold or titled in Delaware beginning with model year 2014. Subject vehicles include passenger cars, light-duty trucks, medium-duty vehicles and medium-duty trucks. Delaware first adopted California LEV standards as state regulation (7 Admin. Code 1140) in 2010, effective with the sale and titling of new vehicles beginning in model year 2014. However, Delaware did not submit a request to EPA to incorporate that version of the program as a SIP revision. Instead, Delaware revised its Regulation 1140 in 2013 to incorporate California's most recent version of its LEV program, otherwise known as the Advanced Clean Car Program. Delaware formally submitted a SIP submittal to EPA on August 20, 2014 requesting EPA to incorporate this 2013 version of its LEV program rule for inclusion in the SIP. Further detail on Delaware's LEV program is provided below in subsection C. of this Background section.

## **B. Delaware's Air Quality with Respect to the Federal National Ambient Air Quality Standards (NAAQS) for Ozone**

### **1. Delaware Ozone Nonattainment**

The CAA, as amended in 1990, requires EPA to set NAAQS for ambient air pollutants considered harmful to public health and the environment. EPA establishes NAAQS for six principal air pollutants, or "criteria" pollutants, which include: ozone, carbon monoxide (CO), lead, nitrogen dioxide, fine particulate matter (PM<sub>2.5</sub>), and sulfur dioxide (SO<sub>2</sub>). The CAA establishes two types of NAAQS. Primary standards provide public health protection, including protecting the health of "sensitive" populations such as asthmatics, children, and the elderly. Secondary standards protect public welfare, including protection against decreased visibility and

damage to animals, crops, vegetation, and buildings. The CAA also requires EPA to periodically review the standards to ensure that they provide adequate health and environmental protection, and to update those standards as necessary.

Ozone is formed in the atmosphere by photochemical reactions between ozone precursor pollutants, including volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA directs areas designated as nonattainment to apply controls on VOC and NO<sub>x</sub> emission sources to reduce the formation of ozone.

EPA has revised the ozone NAAQS and designated and classified areas under those revised NAAQS several times since the CAA was reauthorized in 1990. For each revised ozone NAAQS, Delaware has had areas designated as nonattainment for the pollutant ozone.

On November 6, 1991 (56 FR 56694), EPA designated Kent and New Castle Counties as severe nonattainment under the 1-hour ozone NAAQS, as part of the Philadelphia-Wilmington-Trenton, PA-DE-NJ ozone nonattainment area, with Sussex County designated as a separate, marginal 1-hour ozone nonattainment area. Both areas were found to have attained the 1-hour ozone standard by their respective attainment dates, although neither area was formally redesignated to attainment. EPA later revoked the 1-hour ozone NAAQS effective June 15, 2005.

On April 30, 2004 (84 FR 23857), EPA designated all three Delaware counties as moderate nonattainment under the 1997 8-hour ozone NAAQS, as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment area. EPA granted the area a 1-year extension of its attainment date (from 2010 to 2011) on January 21, 2011 (76 FR 3840). On March 26, 2012,

EPA determined that the area had attained the 8-hour ozone NAAQS by its attainment date and also that it qualified for a clean data determination, which suspended most CAA air quality planning requirements based on air quality monitoring data showing that the area met the NAAQS for the most recent three prior years. Once again, the area was never formally redesignated to attainment prior to EPA's revocation of the 1997 8-hour NAAQS on March 6, 2015 (44 FR 12264), effective April 6, 2015.

Most recently, EPA revised the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm on March 27, 2008 (73 FR 16436). On May 21, 2012 (77 FR 30088), EPA finalized designations for this 2008 8-hour ozone NAAQS, with New Castle County designated marginal nonattainment as part of the Philadelphia-Wilmington-Atlantic City nonattainment area, and Sussex County once again designated marginal nonattainment as the separate Seaford, DE area.

On August 27, 2015, EPA published a **Federal Register** document (80 FR 51992) proposing to find that the Seaford, DE area had attained the 2008 8-hour ozone NAAQS by the marginal area attainment deadline of July 20, 2015, based on complete, quality-assured and certified ozone monitoring data for the period 2012–2014. In that same action, EPA proposed to find that the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD marginal area meets the criteria, as provided in CAA section 181(a)(5) and interpreted by regulation at 40 CFR 51.1107, to qualify for a 1-year attainment date extension for the 2008 8-hour ozone NAAQS.

## **2. Delaware PM<sub>2.5</sub> Nonattainment**

PM<sub>2.5</sub> can be emitted directly or formed secondarily in the atmosphere. The main precursors of secondary PM<sub>2.5</sub> are SO<sub>2</sub>, NO<sub>x</sub>, ammonia, and VOCs. Sulfates are a type of secondary particle formed from SO<sub>2</sub> emissions of power plants and industrial facilities. Nitrates, another common

type of secondary particle, are formed from NO<sub>x</sub> emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for PM<sub>2.5</sub> (62 FR 38652). EPA promulgated primary and secondary annual standards at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>), based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations. In the same rulemaking, EPA promulgated primary and secondary 24-hour standards of 65 µg/m<sup>3</sup>, based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006 (71 FR 61144), EPA once again revised the PM<sub>2.5</sub> NAAQS, retaining the annual average NAAQS at 15 µg/m<sup>3</sup> but revising the 24-hour NAAQS to 35 µg/m<sup>3</sup>, based again on the 3-year average of the 98th percentile of 24-hour concentrations. As established by EPA regulation at 40 CFR part 50, the primary and secondary 1997 Annual PM<sub>2.5</sub> NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 µg/m<sup>3</sup> at all relevant monitoring sites in the subject area over a 3-year period.

Under the revised particulate matter NAAQS promulgated by EPA since 1990, Delaware's New Castle County has been designated nonattainment for both the 24-hour and annual PM<sub>2.5</sub> NAAQS on a number of occasions. On January 5, 2005 (70 FR 944), and supplemented on April 14, 2005 (71 FR 19844), EPA designated New Castle County nonattainment for the annual 1997 PM<sub>2.5</sub> NAAQS as part of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area. On November 13, 2009 (74 FR 58688), EPA promulgated designations for the 24-hour PM<sub>2.5</sub> NAAQS established in 2006, designating New Castle County nonattainment as part of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area. EPA did not promulgate designations for the 2006 Annual PM<sub>2.5</sub> NAAQS because that NAAQS was essentially identical to the 1997



Annual PM<sub>2.5</sub> NAAQS. The November 13, 2009 action clarified that all counties in Delaware were designated unclassifiable/attainment for the 1997 24-hour PM<sub>2.5</sub> NAAQS through the designations promulgated on January 5, 2005. EPA has since redesignated Delaware's portion of the Philadelphia-Wilmington, PA-NJ-DE nonattainment area as attainment with both the 1997 and 2006 PM<sub>2.5</sub> NAAQS. *See* 79 FR 45350, (August 5, 2014).

On January 15, 2013, EPA promulgated a revised primary annual PM<sub>2.5</sub> NAAQS (78 FR 3086), strengthening the standard from 15 µg/m<sup>3</sup> to 12 µg/m<sup>3</sup>. Nonattainment area designations for the 2012 primary annual PM<sub>2.5</sub> standard were published on January 15, 2015 (80 FR 2206), with all counties in Delaware classified as unclassifiable/attainment.

### **C. Federal Motor Vehicle Emission Standards**

To reduce air pollution from motor vehicles, which contributes to higher levels of ambient air pollution such as ozone and PM<sub>2.5</sub>, motor vehicles sold in the United States are required by the CAA to be certified to meet Federal motor vehicle emission standards. States are generally prohibited from adopting vehicle standards, except for California, which, having regulated vehicle emission prior to passage of the CAA in 1970, was granted an exception by the CAA to continue to issue its own vehicle emission standards. Section 209 of the CAA requires that California must demonstrate to EPA that its newly adopted standards will be "...in the aggregate, at least as protective of public health and welfare as applicable Federal standards."

The CAA also authorizes other states to adopt California emission standards for which EPA has granted California such a waiver of preemption. Under section 177 of the CAA, states are authorized to adopt California's standards in lieu of Federal vehicle standards, provided they do so with at least two model years lead time prior to the effective date of the standards, provided

that EPA has issued a waiver of preemption to California for such standards.

EPA has adopted several iterations, or “tiers,” of Federal emissions standards since the CAA was reauthorized in 1990. When Delaware first state-adopted California’s LEV standards in 2010, the Federal vehicle emission standards in effect were Tier 2 standards, which were adopted by EPA on February 10, 2000 (65 FR 6698) and implemented beginning with 2004 model year vehicles. These Federal Tier 2 standards set tailpipe emissions standards for passenger vehicles and light-duty trucks and also limited gasoline sulfur levels. The Federal Tier 3 program set more stringent vehicle emissions standards and further limited allowable sulfur content of gasoline for new cars, beginning in 2017. EPA attempted to closely harmonize the Tier 3 standards with California’s most current LEV Program. EPA finalized the Tier 3 vehicle and fuel standards on April 28, 2014 (79 FR 23414).

On May 7, 2010 (75 FR 25324), EPA and the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) jointly established a national program consisting of new standards for light-duty motor vehicles to reduce GHG emissions and to improve fuel economy. This program affected new passenger cars, light-duty trucks, and medium-duty passenger vehicles sold in model years 2012 through 2016. On October 15, 2012 (77 FR 62624), EPA and NHTSA issued another joint rule to further tighten GHG emission standards for model years 2017 through 2025. The Federal GHG standards were harmonized with similar GHG standards set by California, to ensure that automobile manufacturers would face a single set of national emissions standards to meet both Federal and California emissions requirements.

#### **D. California LEV Program**

In 1990, California's Air Resources Board (CARB) adopted LEV standards applicable to light- and medium-duty vehicles and phased-in beginning with model year 1994 vehicles. In 1999, California adopted a second generation of LEV standards, known as LEV II, which were phased-in beginning model year 2004 through model year 2010. EPA waived Federal preemption for California's LEV II program on April 22, 2003 (68 FR 19811).

This LEV II program reduced emissions in a similar manner to the Federal Tier 2 program by use of declining fleet average non-methane organic gas (NMOG) emission standards, applicable to each vehicle manufacturer each year. Separate fleet average standards were not established for NO<sub>x</sub>, CO, PM, or formaldehyde as these emissions are controlled as a co-benefit of the NMOG fleet average (fleet average values for these pollutants are set by the certification standards for each set of California prescribed certification standards.) These allowable sets of standards ranged from LEV standards (the least stringent standard set) to Zero Emission Vehicle (ZEV) standards (the most stringent standard set). California's LEV II program established various other standards: The Ultra-Low Emission Vehicles (ULEV), Super-Ultra Low Emission Vehicles (SULEV), Partial Zero Emission Vehicles (PZEV), and Advanced Technology-Partial Zero Emission Vehicles (AT-PZEV). Each manufacturer complied by demonstrating that its own sales-weighted average of these respective categories of standards fell below overall program standards.

In January 2012, California approved a new LEV program for model years 2017 through 2025, called the Advanced Clean Cars Program, or the LEV III program. The program combines control of smog, soot, and GHG emissions with requirements for greater numbers of ZEV vehicles into a single program. LEV III regulations apply to light-duty vehicles, light-duty

trucks, and medium-duty passenger vehicles. The program was phased in beginning with vehicles certified in model year 2015, with all vehicles meeting LEV III standards by model year 2020. Amendments to California's ZEV requirements added flexibility to California's existing ZEV program for 2017 and earlier model years, and establish new sales and technology requirements starting with the 2018 model year. The LEV III amendments establish more stringent criteria and GHG emission standards starting with the 2015 and 2017 model years, respectively. The California GHG standards are almost identical in stringency and structure to the Federal GHG standards for model years from 2017 to 2025. Additionally, on December 2012, California adopted a "deemed to comply" regulation that enables manufacturers to show compliance with California GHG standards by demonstrating compliance with Federal GHG standards. On June 9, 2013 (78 FR 2112), EPA granted a Federal preemption waiver for California's Advanced Clean Cars Program. California's LEV III program rules are codified in Title 13 of the California Code of Regulations (CCR), under Division 3.

#### **E. Delaware LEV Program**

Delaware first adopted California's LEV II program via a Delaware LEV program regulation (7 DE Admin Code 1140) adopted on November 9, 2010, effective with 2014 and newer model year passenger cars and trucks and medium-duty vehicles titled in Delaware. Prior to that, Delaware participated in the National Low Emission Vehicle (NLEV) program – a voluntary, nationwide clean car program promulgated by EPA, in conjunction with auto manufacturers and states, which allowed for more stringent vehicle standards than prescribed by Federal law. However, the program expired with the promulgation by EPA of more stringent Tier II motor vehicle standards, which were sold beginning in model year 2004. Therefore, the Delaware LEV program effectively superseded Federal Tier 2 vehicle standards beginning with model year

2014. However, Delaware did not submit the 2010 version of its LEV program rule (7 DE Admin. Code 1140) to EPA as a SIP revision request to EPA at that time, and the SIP was not amended at that time to replace the defunct NLEV program with the Delaware LEV program.

## **II. Summary of August 2014 Delaware LEV SIP Revision**

On August 20, 2014, Delaware submitted a SIP submittal requesting that EPA amend the Delaware SIP to incorporate the state's LEV program. Delaware adopted revisions to its Delaware LEV program, which was originally adopted in December of 2010, on November 15, 2013 and published the revised regulation in the Delaware Register of Regulations on December 1, 2013 (effective December 11, 2013). This revised version of Regulation 1140 serves to incorporate by reference California's more recent LEV III standards and GHG standards applicable to model year 2015 to 2025 LEV-subject vehicles. At the same time, Delaware rescinded requirements that could prospectively and automatically force incorporation of future California LEV rule changes to Delaware's LEV program, without being subject to rulemaking under Delaware's regulatory process.

EPA is incorporating by reference Delaware's entire Regulation 1140 Delaware Low Emission Vehicle Program (7 DE Admin. Code 1140, effective date December 11, 2013). Section 10.0 of Regulation 1140 lists the applicable sections of Title 13 of the California Code of Regulations that comprise California's LEV III program which Delaware has incorporated by reference as part of state adoption process of Delaware's LEV program. Future changes made by California to its LEV program will require additional regulatory action on the part of Delaware and a SIP revision request to EPA to amend the Delaware SIP, in the event that Delaware wishes to include such changes to its program.

Since Delaware's LEV program Regulation 1140 is codified in the same regulatory section as the prior Delaware NLEV program, the action to approve Delaware's request to revise the SIP to incorporate the LEV program for the first time will have the effect of superseding the prior SIP-approved, defunct NLEV program in the Delaware SIP. *See* 62 FR 72564, (December 28, 1999). Thus, this action also removes Delaware's prior approved NLEV rule from the SIP and replaces it with the most recently amended version of Regulation 1140, state effective December 11, 2013.

### **III. Final Action**

EPA is approving Delaware's August 20, 2014 SIP submittal pertaining to adoption by Delaware of a LEV program as a revision to the Delaware SIP. The CAA authorizes states to adopt California's vehicle standards for which EPA has granted California a waiver of preemption from Federal vehicle standards that would otherwise apply. In this case, Delaware has already adopted California LEV III emission standards and has begun implementing the program. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a

second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Incorporation by Reference**

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference Delaware's LEV Program codified at 7 DE Admin. Code 1140 (effective date of December 11, 2013) to 40 CFR part 52 set forth below.

The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

##### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country



located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

## **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that

EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action to approve Delaware's LEV Program SIP revision request may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 29, 2015.

Shawn M. Garvin,  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### **Subpart I—Delaware**

2. In § 52.420, the table in paragraph (c) is amended by:

- a. Removing the heading “1140 Delaware’s National Low Emission Vehicle (NLEV)” and adding in its place “1140 Delaware Low Emission Vehicle Program.”
- b. Revising the entries under heading number 1140 for Sections 1.0., 2.0 and 3.0; and
- c. Adding entries under heading number 1140 for Sections 4.0, 5.0, 6.0, 7.0, 8.0, 9.0, 10.0, 11.0, and 12.0.

The revisions and additions read as follows:

#### **§ 52.420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

#### **EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP**

| <b>State regulation (7 DNREC 1100)</b> | <b>Title/subject</b> | <b>State effective date</b> | <b>EPA approval date</b>  | <b>Additional explanation</b> |
|--|----------------------|-----------------------------|---|-------------------------------|
| * * *                                  | * * *                | *                           | * *   |                               |
| Section 1.0                            | Purpose              | 12/11/13                    | <u>[Insert date of publication in the Federal Register]</u><br><u>[Insert Federal Register]</u> |                               |

| <b>State regulation (7 DNREC 1100)</b> | <b>Title/subject</b>                      | <b>State effective date</b> | <b>EPA approval date</b>   | <b>Additional explanation</b> |
|--|---|-----------------------------|--|-------------------------------|
|  |   |                             | <u>citation]</u>   |                               |
| Section 2.0                            | Applicability                             | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 3.0                            | Definitions                               | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 4.0                            | Emission Certification Standards          | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 5.0                            | New Vehicle Emission Requirements         | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 6.0                            | Manufacturer Fleet Requirements           | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 7.0                            | Warranty                                  | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 8.0                            | Reporting and Record-Keeping Requirements | 12/11/13                    | [Insert date of publication in the Federal   |                               |

| <b>State regulation (7 DNREC 1100)</b> | <b>Title/subject</b>       | <b>State effective date</b> | <b>EPA approval date</b>   | <b>Additional explanation</b> |
|--|----------------------------|-----------------------------|--|-------------------------------|
|  |                            |                             | Register]<br>[Insert Federal Register citation]  |                               |
| Section 9.0                            | Enforcement                | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 10.0                           | Incorporation by Reference | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 11.0                           | Document Availability      | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
| Section 12.0                           | Severability               | 12/11/13                    | [Insert date of publication in the Federal Register]<br>[Insert Federal Register citation] |                               |
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[FR Doc. 2015-25954 Filed: 10/13/2015 08:45 am; Publication Date: 10/14/2015]